

1 License.

2 Q This was the filed version to the FCC?

3 A It looks like the original version.

4 Q Turning to page 20 of this exhibit, specifically
5 question 15. Do you see what I'm referring to?

6 A Yes.

7 Q Do you recall completing the answer to this
8 question in the application?

9 A That's the same answer that I give on the draft,
10 yes.

11 Q And at this time, if we go back at page 23, is
12 dated December 21, 1993, were there any documents,
13 instructions, contracts or understanding relating to
14 ownership or future ownership rights of Hicks Broadcasting
15 of Indiana?

16 A No, there were not.

17 Q When you were responding, filling out this
18 application, how to respond to this question give you any
19 pause, any question about how to respond?

20 A No.

21 Q Did you have any agreement at this time of any
22 sort to sell your interests in this station at some point
23 down the road to Mr. Dille or any member of his family?

24 A I had no agreement of any sort.

25 JUDGE CHACHKIN: Do you want to take another five-

1 minute recess?

2 MR. HALL: That's fine, Your Honor.

3 JUDGE CHACHKIN: Okay, we'll take a five-minute
4 recess.

5 (Whereupon, a recess was taken.)

6 JUDGE CHACHKIN: Back on the record.

7 BY MR. HALL:

8 Q Still focusing, Mr. Hicks, on the response, the
9 question and response to 15, ultimately, Mr. Hicks, did the
10 Dille children end up with an option under which they could
11 purchase your share of in certain circumstances?

12 A Yes, the did.

13 Q In what document is that option reflected?

14 A That option is reflected in the operating
15 agreement as we formed the limited liability company.

16 Q When was that -- I'm sorry. When was that
17 document agreed to by the parties?

18 A That was in late March of '93. '94, '94. Excuse
19 me.

20 Q Was that -- do you know whether the operating
21 agreement subsequently was submitted to the FCC?

22 A The operating agreement?

23 Q Yes.

24 A Yes, it was. To my knowledge, yes.

25 Q Knowing what you know today, would you change the

1 answer that you gave to question 15 back in the summer of
2 1993, when this was executed?

3 A Knowing what I know today -- excuse me.

4 Q I'm sorry. Not a very well formed question. I
5 apologize.

6 Is there any question in your mind today, Mr.
7 Hicks, that the answer you gave to question 15 at the time
8 that this was signed, December 1993, was accurate?

9 A That was an accurate question then and I would
10 sign it the same way today, yes.

11 Q Would you turn to page 21 in the exhibit? The
12 very top of the page, Section 3?

13 A Yes.

14 Q And did you check the "yes" box in response to the
15 question posed in Section 3?

16 A Well, on my draft --

17 Q If you want to refer back to your draft, that's
18 fine.

19 A On my draft, I did, yes.

20 MR. HALL: And that's Mass Media Bureau 37, for
21 the record, Your Honor.

22 BY MR. HALL:

23 Q Did you discuss how you should complete that
24 section before you filled out that section with anyone?

25 Another bad question.

1 Did you have any discussions with anyone about how
2 you should fill out the answer to that question?

3 A No, sir.

4 Q What did you understand this section of the
5 application to be requesting?

6 A My understanding of that section was that the
7 applicant, which was myself, was certifying that there was
8 significant liquid assets to operate the facility for a
9 three-month period.

10 Q I believe you said "significant." Is that
11 "sufficient liquid assets"?

12 A Excuse me. Yes, sufficient.

13 Q And at the time that you executed this
14 application, December 21, 1993, did you believe that there
15 were sufficient liquid assets to consummate the WRBR
16 transaction to operate the station for three months?

17 A You would be talking about personal assets,
18 personal assets?

19 Q Correct.

20 A That's correct. Yes.

21 Q For your own personal assets. Leaving aside
22 anything with the minority members, is that right?

23 A That would be correct.

24 Q If you look down to Section 5 on that page, the
25 section concerning the Equal Employment Opportunity Program?

1 A Yes.

2 Q Were you the one who initially completed the
3 answer to this section as well?

4 A I did.

5 Q And this indicates that "The applicant, Hicks
6 Broadcasting of Indiana, proposes to employees five or more
7 full-time employees," correct?

8 A Yes, it does.

9 JUDGE CHACHKIN: Did you say --

10 MR. HALL: I was just looking at this to see if I
11 said that correctly.

12 THE WITNESS: That's what it says.

13 MR. HALL: Let's try it again.

14 BY MR. HALL:

15 Q Does this Section indicate that Hicks Broadcasting
16 does not propose to employ five or more full-time employees?

17 A I indicated that I did not intend to hire five or
18 more employees, correct.

19 Q You did it much better than I did. Thank you.

20 At the time that you completed this part of the
21 application, did you discuss your response to this section
22 with anyone else?

23 A Well, this was in the -- in the plan when John
24 Dille and I talked about the joint sales agreement, and the
25 number of employees that would be necessary to actually run

1 WRBR along with the automation program that we had planned.

2 So, yes, this was a plan in my mind pretty much
3 from the beginning, that this station could be operated with
4 less than five employees.

5 Q Referring to this Form 314 as a whole, Mr. Hicks,
6 the application form, did you have any intent to deceive the
7 FCC in any way through any of your answers to these
8 questions?

9 A No, I did not.

10 Q At some time, Mr. Hicks, did you become aware that
11 the FCC was seeking additional information related to the
12 assignment application filed on behalf of Hicks Broadcasting
13 of Indiana?

14 A Yes. Yes, I did.

15 Q How did you find out about this?

16 A I received a letter, I believe, from Alan Campbell
17 indicating that someone on the staff had indicated they
18 needed some additional information.

19 Q Would you turn in the same volume of the Mass
20 Media Bureau exhibits that you're currently in, Exhibit 1,
21 page 41?

22 Do you have that document before you, Mr. Hicks?

23 A I do.

24 Q Is this the letter to which you were just
25 referring, the letter from Mr. Campbell?

1 JUDGE CHACHKIN: What exhibit are we on?

2 MR. HALL: Exhibit 1, page 41.

3 JUDGE CHACHKIN: Exhibit 1.

4 Go ahead with your questions.

5 BY MR. HALL:

6 Q Is this the letter from Mr. Campbell that you were
7 just referring to in your previous answer to my question?

8 A Yes, that's correct.

9 Q Now, did you speak with anyone at the FCC
10 concerning information that they were requesting?

11 A No, I did not.

12 Q Turning to the third paragraph of that exhibit,
13 the paragraph beginning, "Second," if you look down at the
14 third line there is a sentence beginning, "I have sent
15 statements to John and his father to sign."

16 Do you see that?

17 A I do.

18 Q Do you recall whether the statement that Mr.
19 Campbell was sending to Mr. Dille and his father to sign was
20 enclosed with this letter that he sent to you on February
21 17th?

22 A I don't believe it was, no.

23 Q Now, going to the first sentence of that
24 paragraph, this is Mr. Campbell describing the statement
25 that was requested; is that accurate?

1 A Would you please just --

2 Q Sure, I'd be happy to. Well, let me ask it this
3 way.

4 The first sentence of that paragraph indicates
5 that the staff wants a statement from John Dille and his
6 father that they will not be involved in the day-to-day
7 operations of WRBR, and will not participate in the
8 financing of the purchase of the station for John's
9 children. Let's split that up.

10 At the time of this letter, February 17, 1994, was
11 there any intention for John Dille and his father to be
12 involved in the day-to-day operations of WRBR?

13 A I had no intent --

14 MR. SHOOK: Objection.

15 JUDGE CHACHKIN: What's the objection?

16 BY MR. HALL:

17 Q Was there any intention on your part, Mr. Hicks,
18 that Mr. Dille or his father would be involved in the day-
19 to-day operations of the operation of WRBR?

20 A I had no intention of John nor his father having
21 anything to do with the day-to-day operations.

22 Q Secondly, the second part of that sentence talks
23 about a statement that John Dille and his father will not
24 participate in the financing or the purchase of the station
25 for John's children.

1 At the time did you have any knowledge that Mr.
2 Dille or his father had given or planned to give any money
3 to his children related to the WRBR deal?

4 A I did not.

5 Q Did you have any agreement with Mr. Dille or his
6 father that either of them would give you any money for the
7 WRBR deal?

8 A No, I did not.

9 Q Did you ever discuss the issue of the amendment
10 with Mr. Campbell after receiving this letter from him?

11 A I don't believe I talked to Alan Campbell about
12 this, no.

13 Q Do you recall if Mr. Campbell ever told you that
14 there was ultimately -- was the amendment, that is, the
15 statement from Mr. Dille, was that ever filed with the
16 Commission, to your knowledge?

17 A To my knowledge, it was filed with the Commission.

18 Q Did you ever hear from Mr. Campbell as to whether
19 there had been a problem from the Commission with regard to
20 this amendment?

21 A I heard of no problems.

22 Q Now, did you ever review or see the statement that
23 ultimately was submitted to the FCC about Mr. Dille and his
24 father's involvement?

25 A Yes, I did.

1 Q Do you remember reviewing it before it went to the
2 FCC, or actually, what did you do -- in what context did you
3 see that document?

4 A I believe it was just sent to me, and I reviewed
5 it and filed it.

6 Q Filed it with the FCC or?

7 A No, it had been filed with Mr. Campbell, but I
8 just put it in my files.

9 Q Did you ever have any reason to think -- first of
10 all, who -- I believe that you testified that this letter
11 indicates that Mr. Campbell would draft the statement for
12 Mr. Dille; is that correct?

13 A That's what this says, yes.

14 Q Did you ever have any reason to question whether
15 this statement that Mr. Campbell was going to draft was
16 going to be responsive to what the FCC had requested?

17 A I had no reason to believe it would not be.

18 Q Did you have any intention, Mr. Hicks, of
19 misleading the FCC in any way through this amendment,
20 related to this amendment?

21 A No, sir.

22 Q Let's turn to a different issue, Mr. Hicks. If
23 you could turn to Mass Media Bureau Exhibit 3, the document
24 beginning at page 87. Now, there has already been plenty of
25 testimony about this so I'm not going to have you look at

1 the entire document, but I'll represent to you that this has
2 been admitted as the operating agreement of Hicks
3 Broadcasting of Indiana.

4 Have you seen this document before, Mr. Hicks?

5 A Yes, I have.

6 Q If you could turn to page 93 of the exhibit.

7 A Okay.

8 Q Do you have it, sir?

9 A I have it.

10 Q I would like to draw your attention specifically
11 to Section 7.4(b) entitled "Call Provision."

12 A Yes.

13 Q I think you've probably reviewed this in the past,
14 but would you just take a moment to review it again, please.

15 (Witness reviews document.)

16 A Okay.

17 Q What does this -- is this the provision that
18 implements the -- I'm sorry.

19 Does this provision give the minority members an
20 option to purchase your shares at some point under certain
21 circumstances?

22 A That's what I understand, yes.

23 Q Now, how did the -- what is your recollection of
24 how this call provision came to be?

25 A My recollection of how this came about was during

1 the course of the transfer of these documents putting
2 together the operating agreement for the limited liability,
3 the corporation, or company, that this call provision was
4 inserted in these documents.

5 Q Do you know by whom it was inserted initially? By
6 whom it was proposed initially, I guess, would be a better
7 way to put that.

8 A Yes. My understanding that it was submitted from
9 the attorney's representing the Dille children.

10 Q Do you know -- who are those attorneys you're
11 referring to?

12 A Barnes & Thornburg, I believe.

13 Q Do you recall approximately when it was that they
14 initially proposed this call provision?

15 A This was very close to the closing of the deal.

16 Q And the closing was on March 31st, I believe.

17 A This was down near the end of March, in the
18 remainder days of March, right.

19 Q Did you, when it was initially proposed by Barnes
20 & Thornburg, do you recall having discussing with Brown
21 regarding the call provision?

22 I realize we're looking at the final here, not the
23 draft, but do you remember having a discussion with Mr.
24 Brown about the call provision that had been provision that
25 had been proposed by Barnes & Thornburg?

1 A Yes, I do. At some point, I'm not sure it was
2 right at the first point this was proposed, but at some
3 point I did have a set down session with Mr. Brown regarding
4 the call provision, right.

5 Q And what do you recall discussing with Mr. Brown
6 concerning the call provision?

7 A He was informing me that this was in the documents
8 and how did I react to this.

9 Q What did you respond?

10 A I remember one thing that I saw. I really looked
11 at it and really didn't have a great deal of problem with
12 it. I remember that the original purchase price outside of
13 the formula was \$50,000.

14 Q That's the -- what is it now in the final?

15 A And now it's 100,000, and I remember just telling
16 Rick, in fact, I remember going over with a pencil on his
17 document and crossing out the 50 and writing 100 there.
18 Other than that, I really didn't have a great deal of
19 problem with it.

20 Now, he might have reworked some of that; that is,
21 that's what his job is obviously to protect my interests.
22 But that was one of the things that I contributed to this.

23 Q I think you mentioned your reaction was you had no
24 real problem with this call provision when you first
25 reviewed it.

1 Why is that the case?

2 A Well, this was a business deal that I entered into
3 with the Dille children. The Dille children were in this
4 for an investment purpose. I have been an owner of various
5 broadcast licenses. I was at the age then that I was
6 thinking of not being in it for a great deal of time more,
7 not 20 years, or making it the rest of my career. But I
8 thought that if somewhere down the line this worked for them
9 to be able to purchase this, then I guess that was fine with
10 me.

11 Q But what if the station had done well, wouldn't
12 you want to see the fruits of your efforts?

13 A I think I would have if the station, and it is, by
14 the way, doing well, then we have a formula which kicks in
15 there that at that time was a fair formula.

16 Q Did you have any concern that the children would
17 exercise this call provision soon after the operating
18 agreement had been signed and finalized?

19 A Did I have a?

20 Q Ny concerns or belief that they might --

21 A No.

22 Q -- exercise it very soon after the deal was
23 closed?

24 A I really wouldn't -- I really wouldn't know what
25 the purpose of them wanting to do that would be. I mean,

1 they aren't broadcasters. If they could have done that,
2 then they might have worked a deal with their father and
3 bought the radio station to begin with. So it really didn't
4 cross my mind that that was going to be a real problem.

5 Q If they had done that, what you have gotten out of
6 it?

7 A \$100,000.

8 Q You mentioned previously that at the time this
9 deal was consummated you were at the time of life when you
10 might not want to be involved in a station for 20 years.

11 How old were you at the time, March 1994?

12 A I was probably 55; in that area.

13 Q Do you have any -- what were your plans, I guess,
14 for the rest of your career and the rest of your life at
15 that point?

16 A Well, like I say, I love the radio business. I've
17 been in it all my life, and I always want to be a part of a
18 radio in some way, but maybe not as active as I had been in
19 the past. It doesn't mean that I want to get out of radio
20 and sit on the beach. I want to be involved in it, but I
21 also realized that, you know, this was a very good
22 opportunity, I thought, for both parties. And if this is
23 something that down the road the Dille family children
24 wanted to do, then that was kind of fine with me. I had 51
25 percent of that company, and that was -- that was fine.

1 Q The way the LLC was structured, the fact that you
2 had 51 percent, what did that mean?

3 A Well, in the way that it was structured with the
4 LLC, I mean, I was the controlling entity of the radio
5 station. In a sense, I didn't have to -- if this was the
6 way I wanted to operate, I wouldn't have to concerned with
7 them at all. I could have done exactly what I wanted to do
8 at any time, any place. That wasn't the way I choose to
9 operate, but that's what the controlling member of an LLC
10 has; that's the powers he has.

11 Q At the time that this call provision in this
12 operating agreement was finalized, you were still employed
13 by Crystal Radio Group?

14 A Yes, I was.

15 Q What were you doing for them again? You mentioned
16 before.

17 A I was the chairman of the board of Crystal Radio.

18 Q Were you also employed by Crystal Radio?

19 A And employed.

20 Q And you did not yourself get the right to call
21 their shares even though you were the majority owner.

22 Was that for the same reasons, you just were --

23 A That was pretty much the same reason, right. I
24 just thought this was a fair deal at the time, and I wanted
25 to be fair about it so.

1 Q You mentioned the formula that's in 7.4(b). Was
2 that part of the proposal from anyone at Barnes & Thornburg?

3 A Yes, it was.

4 Q Do you recall whether you and Mr. Brown made any
5 changes to the formula?

6 A I remember I -- he asked me about that formula,
7 and I did give some thought to it. I think at those times
8 those were -- and you'll have to take into consideration the
9 state that the radio station was in at that time, a five to
10 seven times cash flow multiple is probably -- was probably
11 what was going at that time, at that time period. Now
12 obviously it's much greater and coming down. But I got
13 probably the low end of the five to seven, and I
14 rationalized that by the state of what the radio station was
15 at that time. It probably was a little better than fair
16 market at that time.

17 Q Since the operating agreement was finalized, have
18 the minority members ever exercised -- attempted to exercise
19 their call rates?

20 A No, sir.

21 Q Has there ever been any discussion among the
22 members or anyone on behalf of the members about the
23 possibility that they would do so?

24 A We've never had a discussion about the minority
25 members exercising that option or we've never had any

1 discussion about the sale of the company; no discussion at
2 all in those regards.

3 Q Now, do you recall, even though you didn't get a
4 mutual call provision, that you ended up as part of this
5 deal getting a put option?

6 A That was a creation of Rick Brown, that's correct.

7 Q Can you explain to us what your understanding of a
8 put option is?

9 A Well, it's an exit -- it's an exit strategy for
10 me. Basically that's it. I mean, that's kind of what a put
11 is.

12 Q What does it allow you to do?

13 A Well, it allows me to exit the company, and he put
14 a three year time period in there, which was fine. We were
15 certainly in a building process at that time, but it gave me
16 an exit strategy.

17 Q And who was -- amongst you and Mr. Brown, who was
18 more concerned about the exit strategy at this point?

19 A Mr. Brown was.

20 Q Why weren't you concerned about it as much as he
21 was?

22 A I guess I really -- I got into this for the fun of
23 the project, to see it materialize and be a viable company,
24 and I guess I wasn't focusing on it being a hard-nosed
25 business deal where I'm going to demand certain things at

1 certain times, and I think that doesn't fit with maybe an
2 attorney's feeling, and that's fine. That's what they're
3 hired for.

4 Q Let's take a look at the side letter agreement
5 that contains the put, if you would. It's Mass Media Bureau
6 Exhibit 61.

7 A Okay.

8 Q Have you seen this document before, Mr. Hicks?

9 A Well, I have seen this in the hearing testimony,
10 but I'm not familiar with the document, no.

11 Q But you ultimately did sign a side letter
12 agreement that contained a put provision similar to that
13 that's in paragraph two of the second page of this document?

14 A That's correct.

15 Q And I apologize for using a non-final version of
16 this, but do you recall whether the purchase price and terms
17 a ultimately signed for the put option were the same as for
18 the call option that we were looking at 7.4(b)?

19 A That's correct.

20 Q Do you recall having a detailed discussion about
21 the whole issue of the put with Mr. Brown?

22 A I'm not sure how detailed it was. I certainly
23 relied on his direction here. He did review this with me,
24 but I wouldn't want to testify that it was detailed, but it
25 was enough to satisfy me.